MONTANA LEGISLATIVE HISTORY

Chapter 18 1999

Bill H 80 S _____ Original bill & history ✓ C

H. Committee on Agriculture		S. Committee on Agriculture	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
1/12	✓ C	2/1	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 1/12	✓ C	2/1	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/11	Revised Fiscal Note Signed		
3/17	Revised Fiscal Note Printed		
3/20	2nd Reading Passed as Amended	57	43
3/23	3rd Reading Passed	72	27
	Transmitted to Senate		
3/24	Referred to Finance and Claims		
4/06	Revised Fiscal Note Requested		
4/06	Revised Fiscal Note Received		
4/06	Revised Fiscal Note Signed		
4/08	Hearing		
4/09	Committee Executive Action--Bill Concurred as Amended	14	4
4/09	Committee Report--Bill Concurred as Amended		
4/10	Revised Fiscal Note Printed		
4/12	2nd Reading Concurred as Amended	35	14
4/13	3rd Reading Concurred	41	9
	Returned to House with Amendments		
4/15	2nd Reading Senate Amendments Concurred	84	14
4/16	3rd Reading Passed as Amended by Senate	52	46
4/16	Sent to Enrolling		
4/19	Returned from Enrolling		
4/20	Signed by Speaker		
4/21	Signed by President		
4/22	Transmitted to Governor		
4/27	Signed by Governor		
4/29	Chapter Number Assigned		

Chapter Number 471
Effective Date: 4/27/1999 - Sections 3, 11, 20-22, 43(2) and (3), 44, 45, 55(1)-(3) and (7), 60, 61, 64, 65, 72 and 75-81
Effective Date: 7/01/1999 - Sections 34, 41(1)(a), (1)(b) and (2)-(6), 46, 62, 63, 66-71, 73 and 74
Effective Date: 10/01/1999 - Sections 1 and 42
Effective Date: Effective Contingent upon Certification, as Provided in (Section 65), That the Defined Contribution Retirement Plan Is Ready to Become Operational or on July 1, 2002, Whichever Is Earlier. - Sections 2, 4-10, 12-19, 23-33, 35-40, 41(1)(c), 43(1), 47-54, 55(4)-(6) and 56-59

HB 80 Introduced by Cobb *LC0179 Drafter: Petesch*

Generally Revise Laws Governing State Lands to Remove Provisions Declared Invalid;...

By Request of Department of Natural Resources and Conservation

12/14	Introduced		
12/21	Referred to Agriculture		
1/04	1st Reading		
1/12	Hearing		
1/13	Committee Executive Action--Bill Passed	20	0
1/13	Committee Report--Bill Passed		
1/15	2nd Reading Passed	94	4
1/16	3rd Reading Passed	94	5
	Transmitted to Senate		
1/26	Referred to Agriculture, Livestock and Irrigation		
2/01	Hearing		

2/02	Committee Executive Action--Bill Concurred	9	0
2/02	Committee Report--Bill Concurred		
2/09	2nd Reading Concurred	49	0
2/10	3rd Reading Concurred	49	0
	Returned to House		
2/10	Sent to Enrolling		
2/11	Returned from Enrolling		
2/13	Signed by Speaker		
2/13	Signed by President		
2/16	Transmitted to Governor		
2/17	Signed by Governor		
2/18	Chapter Number Assigned		
	Chapter Number 18		
	Effective Date: 10/01/1999 - All Sections		

HB 81 Introduced by Menahan *LC0626 Drafter: MacMaster*

Provide That a Youth Transferred from the Youth Court to the District Court and Found Guilty of Certain Offenses May Be Committed for Longer than 5 Years to the Department of Corrections for Incarceration in an Appropriate Correctional Facility;...

12/14	Introduced		
12/21	Referred to Judiciary		
1/04	1st Reading		
1/04	Fiscal Note Requested		
1/04	Fiscal Note Received		
1/06	Fiscal Note Signed		
1/06	Fiscal Note Printed		
1/08	Hearing		
1/11	Committee Executive Action--Bill Passed as Amended	17	2
1/12	Committee Report--Bill Passed as Amended		
1/14	2nd Reading Passed	92	6
1/15	3rd Reading Passed	94	5
	Transmitted to Senate		
1/27	Referred to Judiciary		
3/05	Hearing		
3/23	Committee Executive Action--Bill Concurred as Amended	6	0
3/23	Committee Report--Bill Concurred as Amended		
3/25	2nd Reading Concurred	49	0
3/27	3rd Reading Concurred	49	0
	Returned to House with Amendments		
4/09	2nd Reading Senate Amendments Concurred	98	0
4/10	3rd Reading Passed as Amended by Senate	97	1
4/10	Sent to Enrolling		
4/12	Returned from Enrolling		
4/13	Signed by Speaker		
4/14	Signed by President		
4/15	Transmitted to Governor		
4/21	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 390		
	Effective Date: 10/01/1999 - All Sections		

HOUSE BILL NO. 80

INTRODUCED BY COBB J

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING STATE LANDS TO REMOVE PROVISIONS DECLARED INVALID; AMENDING SECTIONS 20-6-621, 20-15-403, 77-2-106, 77-2-211, 77-2-303, 77-2-311, AND 77-3-132, MCA; AND REPEALING SECTIONS 7-35-4104, 77-3-321, AND 77-5-213, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-6-621, MCA, is amended to read:

"**20-6-621. Selection of school sites; -- approval election; ~~and lease of state lands~~.** (1) (a) Except as provided in subsection (1)(b), the trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved by the qualified electors of the district before a contract for the purchase of a site is entered into by the trustees.

(b) The trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

~~(4) The board of land commissioners may sell, at the appraised value, or lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than:~~

~~(a) 25 acres to be used as a site in the district for an elementary school; or~~

~~(b) 50 acres to be used as a site in the district for a high school.~~"

Section 2. Section 20-15-403, MCA, is amended to read:

"**20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, ~~77-3-321,~~ 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 3. Section 77-2-106, MCA, is amended to read:

"**77-2-106. Charge for granting of easement.** The board shall charge and ~~cause to be collected~~ collect the full market value of the estate or interest disposed of through the granting of any ~~such~~ easement and also fix, charge, and ~~cause to be collected~~ collect the amount of the actual damages resulting to the remaining land or lands from the granting of ~~such~~ an easement as nearly as the ~~same~~ damages can be ascertained. ~~Where a road follows the section lines of state lands, the increased value accruing to said lands on account of construction of a road on said right-of-way easement shall be taken~~

~~into consideration by the board in determining compensation, if any, for the easement.~~"

Section 4. Section 77-2-211, MCA, is amended to read:

"**77-2-211. Exchange of timbered, cut-over, or burned-over lands.** The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange ~~therefor~~ may convey lands not to exceed an equal value, as determined by the board after appraisal by a qualified land appraiser, of similar state land. However, ~~no such~~ an exchange may not be made ~~except that which in~~ unless the exchange, in the opinion of the board, will benefit the public interest. For the purpose of ~~such~~ an exchange, all state lands, including those referred to in ~~77-2-303(3)~~ 77-2-303(2), 77-2-311, and 77-5-101, are subject to be offered for ~~such~~ exchange, and any restrictions against their sale or disposal are, for the purpose of ~~such~~ an exchange, released."

Section 5. Section 77-2-303, MCA, is amended to read:

"**77-2-303. Restrictions on land available for sale.** ~~(1) Except as provided in 77-2-318, lands classified as timberlands are not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law.~~

~~(2)~~(1) Lands ~~which~~ that in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits are not subject to sale, of either the surface land or any of ~~such~~ the mineral deposits ~~therein~~. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

~~(3)~~(2) (a) There is ~~also~~ reserved from sale from all state lands bordering on navigable lakes, ~~or bordering on~~ nonnavigable meandered lakes, and ~~from all state lands bordering on~~ navigable streams, ~~as~~ that the board ~~may deem~~ considers in the best interests of the state, a strip of land ~~which shall include~~ that includes all the land lying between low-water mark and high-water mark and ~~which in addition shall extend~~ that extends in width landward from the line of high-water mark of ~~such~~ the lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of ~~such~~ the abutting government lot at its narrowest point is less than 100 feet, then the strip ~~hereby~~ reserved ~~shall~~ must extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection ~~shall be~~ is subject to the granting of easements the same as other state lands.

(b) ~~Such strips~~ Strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may~~, however,~~ be leased as provided in this title for the leasing of other state lands."

Section 6. Section 77-2-311, MCA, is amended to read:

"**77-2-311. Survey and plat of shore lands.** The board may ~~in its discretion~~ cause any part of the lands bordering on lakes described in ~~77-2-303(3)~~ 77-2-303(2) and on navigable streams ~~which~~ that are reserved from sale to be surveyed and platted into blocks and lots~~, the~~. The lots ~~to~~ may not be ~~not~~ less than 125 feet in width, ~~the width to be~~ measured in the general direction of the abutting water front~~, but~~ ~~in~~. In all ~~such~~ surveys and plats the strip of 100 feet in width along the water front, referred to in ~~77-2-303(3)(a)~~ 77-2-303(2)(a), ~~shall~~ must be reserved for the use and enjoyment of the public."

Section 7. Section 77-3-132, MCA, is amended to read:

"**77-3-132. Leasing privileges of permittee.** (1) During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it ~~shall~~ must be in the form and subject to all the terms and conditions specified in this part, as in the case of a mining lease issued under this part. ~~The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this part, and in any event the permittee has preference without competitive bidding and upon the most favorable terms permitted under this part to 40 contiguous acres.~~

(2) If some other person makes a better bid for a mining lease upon the land covered by the permit and if the board awards a mining lease to a better bidder, the board shall also require ~~such~~ the mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under ~~his~~ the permit in connection with ~~his~~ prospecting and exploration work. Within 30 days from the date the board gives the permittee notice of the issuance of the mining lease or within ~~such~~ a further time as the board upon good cause shown allows, the permittee may remove ~~from the land~~ any machinery, equipment, improvements, and other property placed ~~thereon by him~~ on the land by the permittee."

NEW SECTION. **Section 8. Repealer.** Sections 7-35-4104, 77-3-321, and 77-5-213, MCA, are repealed.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN JOE BARNETT**, on January 12, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Joe Barnett, Chairman (R)
Rep. John L. Holden, Vice Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Paul Clark (D)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Mary Anne Guggenheim (D)
Rep. Donald L. Hedges (R)
Rep. Verdell Jackson (R)
Rep. Rick Jore (R)
Rep. Monica Lindeen (D)
Rep. Gay Ann Masolo (R)
Rep. Sam Rose (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bob Story (R)
Rep. Bill Thomas (R)
Rep. Cliff Trexler (R)
Rep. Darrel Adams (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Joyce Bankhead, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 51, HB80, HB130 Posted 1/6/99

Executive Action: HB51, **DO PASS**
HB80, **DO PASS**
HB130, **DO PASS**

HEARING ON HB80

Sponsor: **REP. JOHN COBB, HD50**, explained the bill which revises laws governing state lands to remove provisions declared invalid.
{Tape : 1; Side : A; Approx. Time Counter : 1.9 - 6.3}

Proponents: BUD CLINCH, Director of DNRC.
{Tape : 1; Side : A; Approx. Time Counter : 6.3 - 7.4}

Opponents: NONE

Questions from Committee Members and Responses:
Rep. Rose to Bud Clinch; Rep. John Cobb; Tommy Butler, Trust Lands Attorney **EXHIBIT 1.**
{Tape : 1; Side : A; Approx. Time Counter : 7.4 - 10.5}

Rep. Story and Rep. Rose to Tommy Butler
{Tape : 1; Side : A; Approx. Time Counter : 10.5 - 16.1}

Informational Witness; Todd Everts, Legislative Branch
{Tape : 1; Side : A; Approx. Time Counter : 16.1 - 17.1}

Closing by Sponsor: Rep. John Cobb closed the Hearing on HB80.
{Tape : 1; Side : A; Approx. Time Counter : 17.1 - 17.7}

HEARING ON HB51

Sponsor: **REP. HAL HARPER, HD52**, explained the bill which changes the dates on meetings and reports for the Drought Advisory Committee.
{Tape : 1; Side : A; Approx. Time Counter : 17.7 - 21}

Proponents; BUD CLINCH, Director of DNRC. **EXHIBIT 2.**
{Tape : 1; Side : A; Approx. Time Counter : 21 - 22.1}

Opponents: NONE

Questions from Committee Members and Responses: NONE

Closing by Sponsor: **REP. HAL HARPER** closed the Hearing on HB51.
{Tape : 1; Side : A; Approx. Time Counter : 22.1 - 22.5}

Rep. Rose to Gary Gingery
{Tape : 1; Side : B; Approx. Time Counter : 20 - 21.8}

Closing by Sponsor:
Rep. Bob Story closed the Hearing on HB130.
{Tape : 1; Side : B; Approx. Time Counter : 21.8 - 23.5}

EXECUTIVE ACTION ON HB130

Motion: Rep. Rose moved HB130 DO PASS.
{Tape : 1; Side : B; Approx. Time Counter : 23.5 - 24.2}

Discussion:
Reps. Clark, Hedges, and Dale.
{Tape : 1; Side : B; Approx. Time Counter : 24.2 - 30}

Vote: Motion carried unanimously. 20-0
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 0.2}

EXECUTIVE ACTION ON HB80

Motion: Rep. Masolo moved that HB80 DO PASS.
{Tape : 2; Side : A; Approx. Time Counter : 0.2 - 0.8}

Discussion:
Reps. Rose, Guggenheim, Dale, Holden, Barnett, Eggers, Hedges, Story, and Adams; also Todd Everts, answered committee questions.
{Tape : 2; Side : A; Approx. Time Counter : 0.8 - 8.7}

Vote: Motion carried unanimously. 20-0
{Tape : 2; Side : A; Approx. Time Counter : 8.7 - 8.9}

EXECUTIVE ACTION ON HB51

Motion/Vote: Rep. Masolo moved HB51 DO PASS. Motion carried unanimously. 20-0
{Tape : 2; Side : A; Approx. Time Counter : 8.9 - 9.3}

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on February 1, 1999 at 3:05 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:
Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)

Members Excused: Sen. Tom A. Beck (R)
Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 51, HB 30, HB 80, 1/27/1999
Executive Action: HB 51, HB 30, HB 80

HEARING ON HB 30

Sponsor: **Representative Ray Peck, HD 91, Havre**

Proponents: **Jack Kane, Dept. of Commerce**

Opponents: **None**

size the consumer wants and we will agree, within reasonable rules, to fill that container with a certain amount of product.

We have been in conflict with the laws. Thirty years ago regional rules applied. The City of Spokane wanted to keep out the competition so their loaves were not 1 pound, they were eight tenths, nine tenths, something like that. Ten years ago when I was an inspector, almost every store had a bakery in it where they actually mixed the ingredients and made bread. The majority of the bakeries now just heat up chunks of frozen dough that comes from the factory. They would like to see some form of uniform regulation across the United States.

Closing by Sponsor:

REP. PECK I'll note for the benefit of the committee I have a former student here, **SENATOR EKEGREN.**

EXECUTIVE ACTION ON HB 30

Motion/Vote: **SEN. HALLIGAN** moved that **HB 30 BE CONCURRED IN. Motion carried unanimously.**

SENATOR EKEGREN to carry **HB 30** to the Senate.

{Tape : 1; Side : A; Approx. Time Counter : 3.12}

HEARING ON HB 80

Sponsor: **REPRESENTATIVE JOHN COBB, HD 50, AUGUSTA**

Proponents: **Bud Clinch, Department of Natural Resources**

Opponents: **None**

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, HB 80 is a request of the Dept. of Natural Resource and removes certain state laws that were declared invalid in a recent Montana District Court case that the Dept. of Natural Resources agreed were illegal. It will not be appealed to the Montana Supreme Court. Montanans for Responsible Use of School Trust sued the State of Montana and the Board of Land Commissioners and the Dept. of Natural Resources in District Court of Lewis & Clark County. The group sued over various legislative statutes which over the years allowed the use of state lands for various purposes as well as set the price in the use of those lands. Their main arguments were that the land was

held in trust, the state must act as trustee and be held in the same strict fiduciary conduct that applies to trustees in general, and that the state was providing favoritism to some of the beneficiaries. That is not permitted. Or the state was not charging fair market value land. In these arguments the court struck down main statutes.

The first page of the handout you have were the statutes that were struck down. **SEE EXHIBIT(1).** We are appealing some of these statutes but these are all the ones the court struck down. Many of these have never been used before, some have just recently been passed by the legislature such as easement payments. On the bottom, the court did uphold several statutes. If you turn the page over, you'll see the statutes we're taking out, which is the bill in front of you.

I'll go over the ones being appealed quickly. The historic easements; this was Rep. Grinde's bill last session to allow the purchase of easements across state lands. That was a $50 application fee and there was a value set on how they've supposed to be paid. The tenant law was to allow adjacent landowners legal access to their property through state lands. The court said we were not charging fair market value but we're appealing that. The court struck down giving free firewood, but we're challenging that. The Court said we did not determine what could be sold for profit before it was given away.

The main one we're appealing is the cabin site rentals. The law set rental at the greater of $102 or 3.5% of the appraised value as determined by the Department of Revenue. There are about 800 cabins or home sites right now. The court said 3.5% wasn't fair market value because the Montanans for Responsible Use group said we ought to be getting 8% to 12%. The Dept. couldn't contradict those figures but we're appealing that.

The ones we are eliminating are cemeteries on public land, coal mining permits for private use and for schools, leasing privileges of permittee, selection of school sites, approval election, and lease of state lands, and restrictions on land available for sale. **REP. COBB** gave a brief history on each of these.

What this bill does is take out what the court and Dept. agreed are Unconstitutional. The ones we are appealing are not a part of this bill.

Proponents' Testimony: Bud Clinch, Director of DNRC, I'm not going to attempt to improve on **REP. COBB's** description of what this bill does. This bill is repealing or amending those statutes that were decided to be Unconstitutional by the District

Court. It's important you know that, for the most part, we hadn't implemented the provisions of those for a long period of time. The District Court's action and/or appeal of this really isn't going to have any affect on our management of state school trust lands. In fact, at the District Court level, most of these statutes that we're amending in here, we didn't even offer a defense because we were of the same persuasion that there was an Unconstitutional question of it.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR JERGESON Have you made an estimate of how much and who will bear the cost of the appeal to the State Supreme Court?

Bud Clinch We haven't made an estimate and who bears the cost. It will come out of the Dept.'s budget, our legal staff, that's part of our budgeted cost to present and argue that case. There will be costs incurred but they won't be additional to what is already budgeted.

REP. COBB The reply brief from the opponents came back today and we have a month to respond. The Supreme Court will either set up a hearing or just decide upon an oral hearing and we just have the results back in 4 to 6 months.

SENATOR JERGESON If we were to decide that historic easements were probably bad public policy and were to amend this bill so we don't defend that, would it give you heartburn?

REP. COBB I'm just carrying the bill. The Senate can do whatever they want.

CHAIRMAN JABS You can't give firewood away?

REP. COBB The laws says permits may be issued free of charge for dead, downed and inferior timber for fuel for domestic purposes for residents and settlers of the state. It's a pretty old law. The Dept. has, in fact, issued some permits in the past. The court said the statute does not distinguish between timber of no commercial value and timber that does have commercial value. The Court said the state failed to first determine if the wood could be sold for profit before it can be given away. The Dept. was trying to say if it's dead, down and inferior, it probably has no value.

CHAIRMAN JABS If there's some value, they can't give it away.

SENATOR DEVLIN What is it about the cabin sites?

Bud Clinch The litigation alleged that the rental rate that we're currently charging for cabin sites, 3.5% of the appraised land value, did not attain fair market value and they basically directed the Dept. to go back and implement fair market value. In fact, they referenced other studies in terms of giving us some direction. It was the Board of Land Commissioners decision that we needed to appeal to get some clarifying language relative to what the appropriate process and rate should be for establishing the rental rate for cabin sites.

SENATOR DEVLIN What do they think the rate should be?

Bud Clinch The plaintiffs alleged that the study this legislature directed two sessions ago that talked about 9 to 12% of the appraised value of the land was a comparable rental rate on private property. That was the evidence that was presented by the plaintiffs. We really didn't have counter argument to prevail at the District Court level so subsequently we got some direction from the District Court that has some serious ramifications as to what we do with our 800 plus cabin and home sites. We're trying to mount a defense to our current process at the Supreme Court.

CHAIRMAN JABS You're saying that 3.5% is okay in your mind, is that right?

Bud Clinch No, what we're really appealing is the rest of the decision. I'd like Tom Butler, our legal counsel to respond. We need to recognize that in this situation, the Land Board is the one who gave us the direction to appeal. I think the Dept. is fairly confident that the current rate of 3.5% probably doesn't meet anybody's standard of fair market value. We're not sure the higher rate of 9% to 12% is the appropriate amount either.

Tom Butler, Trust Lands Attorney for DNRC, One of the statutes that the Dept. of State Lands did appeal or send to the State Land Boards Commissioners for instruction was the cabin site rental statute. What District Judge Dorothy McCarter held was, in referring back to this earlier study, the appropriate range of rental rates is 8% to 12% and the current 3.5% rental rate doesn't comply with the Constitutional requirements for all dispositions of school trust land.

The Dept.'s appeal here is not directly related to whether or not 3.5% is fair market value. It's a very narrow, technical appeal. We're saying the only entity within our government that's authorized to exercise discretion and set the rate for that cabin site is the State Board of Land Commissioners. That's their sole Constitutional duty and power. District Court can affirm a rate or strike down a rate, but it cannot set a rate. That's what we

claim the Court illegally did here. They erred by saying this is the rate you ought to set. The Court can say it's unconstitutional, it's legal or it's not. The appropriate remedy would be to remand this case back to the State Board of Land Commissioners to determine the appropriate rate.

The second portion of this statute we appealed is when you're bringing a civil case. Generally there are pleadings and discovery and notices along the way before you get to trial, showing you exactly what the legal contentions are of each party. In this case the legal contentions of the public interest group who brought this case was that the lack of competitive bidding requirement in the cabin site statute rendered it unconstitutional. They were saying the only way that cabin site rental rates could be Constitutional were through open bidding. Our contention all along was focused very narrowly on when you needed competitive bidding or not. We made our legal arguments to the court saying no, the legislature, in it's discretion, can set up a process for determining fair market value, provided that it allows the Board Commissioners to set the actual rate. The legislature can set up the procedure, the Board of Land Commissioners can set the rate.

At no time did Montrust say they were challenging the 3.5% rate. It's very narrow grounds of appeal. We want to respect the authority of the board and yet we don't want the District Court to overstep it's bounds either.

{Tape : 1; Side : A; Approx. Time Counter : 3:29}

Closing by Sponsor:

REP. COBB It's my understanding **SENATOR BECK** will carry this bill if it passes this committee. Cabin rental sites are not part of this bill, but you'll hear about that in a few months.

HEARING ON HB 51

Sponsor: **REPRESENTATIVE HAL HARPER, HD 52, HELENA**

Proponents: **Bud Clinch, Director, DNRC**

Opponents: **None**

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, HB 51 changes a couple of dates for the Drought Advisory Council Committee. This committee was formed

SENATOR NELSON to carry.

EXECUTIVE ACTION ON HB 80

Motion/Vote: **SEN. DEVLIN** moved that **HB 80 BE CONCURRED IN.** **Motion carried unanimously.**

SENATOR BECK to carry.